

1988

Hans C. Rilling v. First Security Financial Corporation, Kay M. Lewis, Esq. : Brief of Respondent

Utah Court of Appeals

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DOCKET NO.

IN THE ~~SUPREME COURT~~ OF THE STATE OF UTAH
~~COURT OF APPEALS~~

88-0712

HANS C. RILLING,

Plaintiff/Appellant,

vs.

FIRST SECURITY FINANCIAL
CORPORATION, and KAY M.
LEWIS, ESQ., Trustee,

Defendants/Respondents.

Case No. 860499

88-0712-CA

88-0712-A

BRIEF OF RESPONDENT
FIRST SECURITY FINANCIAL CORPORATION

AN APPEAL FROM A SUMMARY JUDGMENT
OF THE SECOND JUDICIAL DISTRICT COURT,
WEBER COUNTY, UTAH
THE HONORABLE DAVID ROTH
JUDGE PRESIDING

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Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

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Plaintiff/Appellant,)	
)	Case No. 860499
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STATEMENT OF ISSUES PRESENTED ON APPEAL

The statement of issues set forth in Appellant's brief is unnecessarily repetitious. The sole issue before this Court on appeal is:

Did Appellant's Lis Pendens, which contained a street address and a legal description of one of the two parcels now claimed by Appellant, provide constructive notice of Appellant's claim to an interest in the parcel of property for which no legal description was given in the Lis Pendens.

IN THE SUPREME COURT OF THE STATE OF UTAH

HANS C. RILLING,)	
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Plaintiff/Appellant,)	
)	Case No. 860499
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FIRST SECURITY FINANCIAL)	
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LEWIS, ESQ., Trustee,)	
)	
Defendants/Respondents.)	

BRIEF OF RESPONDENT
FIRST SECURITY FINANCIAL CORPORATION

STATEMENT OF THE CASE

Respondent First Security Financial Corporation (hereinafter "First Security") does not dispute Appellant Hans C. Rilling's (hereinafter "Rilling") Statement of the Case and adopts that statement by reference herein.

STATEMENT OF FACTS

Rilling's Statement of Facts contains several factual misstatements. Those misstatements are as follows:

1. The property at issue in this litigation consists of two parcels located in Ogden, Utah. The legal descriptions of these two parcels of property are as follows:

Part of Lot 4, MAULE ADDITION, Ogden City, Weber County, Utah: Beginning on the East line of Fillmore Avenue, 280.81 feet South 58' East of 28th Street; thence South 89°2' East 150 feet; thence North 58' West 10 feet; thence North 59°29'40" West 172.41 feet, more or less, to Fillmore Avenue; thence South 58' West to beginning. (Hereinafter Parcel "A.")

Also, a Part of Lot 4, MAULE ADDITION, Ogden City, Weber County, Utah: Beginning at a point 480 feet North 0°58' East from the Southwest corner of said Block 4, and running thence North 0°58' 120 feet along the East side of Fillmore Avenue; thence South 89°02' East 280.89 feet; thence South 0°58' West 120 feet; thence North 89°02' West 280.89 feet to the place of beginning. Situated in the Southwest Quarter of the Northeast Quarter of Section 34, Township 6 North, Range 1 West, Salt Lake City Meridian, U.S. Survey. [R.57-58.] (Hereinafter Parcel "B.")

2. Paragraph 2 of Rilling's Statement of Facts provides the legal description of both parcels of property at issue in this appeal. Rilling identifies the first parcel as Parcel A and indicates that it is the larger parcel of property, the parcel not identified in Rilling's Lis Pendens. In fact, the first parcel described above (Parcel A) is the smaller of the two parcels, and a legal description of that parcel is set forth in Rilling's Lis Pendens. [Record at 18 (attached as Exhibit "A" to Rilling's Brief).] Conversely, the second parcel of property described above, identified in this and in Rilling's Brief as Parcel B, is the larger of the two parcels. No legal description of this parcel is contained in Rilling's Lis Pendens. [Record at 18.]

3. Paragraph 5 of Rilling's Statement of Facts notes that his Lis Pendens contained a legal description of the smaller parcel of property, Parcel A. Rilling again erroneously identifies that parcel as Parcel B. While Rilling notes in that same paragraph 5 that the Lis Pendens referred to an attached valuation notice, "also setting forth the legal description" of the

property, Rilling omits to note that no such Valuation Notice was attached to the Lis Pendens as recorded. [See Record at 18-19.]

4. Rilling fails to note that it is undisputed that First Security had no actual knowledge or notice of Rilling's Lis Pendens or of any claim by Rilling to any interest in Parcel B when First Security made a loan secured by an interest in Parcel B to Marsha Rilling. [Record at 76-77.]

SUMMARY OF ARGUMENTS

First Security does not dispute the priority of Rilling's interest in Parcel A of the property, by virtue of the priority of the recordation of Rilling's Lis Pendens. No issue is before the Court as to the rights of the parties in Parcel A. Likewise, it is undisputed that First Security was unaware of Rilling's Lis Pendens and of any claim by Rilling to any interest in Parcel B when First Security made its loan. Thus, the issues before the Court are concerned solely with whether Rilling's Lis Pendens gave First Security constructive notice of a claim by Rilling to an interest in Parcel B.

Because Rilling's Lis Pendens does not describe Parcel B it provided no notice of any claim by Rilling to any interest in Parcel B. As to Parcel B, the lien of First Security has priority. Utah statute requires that a recorded instrument contain a legal description of the property affected by the instrument. Utah Code Ann. § 57-3-10. Rilling's Lis Pendens, which contained a legal description of only Parcel A, provided notice of a claim by Rilling only as to that parcel of property.

Because the Lis Pendens contained no legal description of and provided no notice, actual or constructive, of Rilling's claim to Parcel B, Rilling's claim to that parcel is subordinate to that of First Security.

It is undisputed that First Security was unaware of Rilling's Lis Pendens when First Security made its loan to Marsha Rilling. Rilling's theory that his Lis Pendens should have alerted First Security to sufficient facts to cause it to inquire further is, thus, based on an erroneous factual premise. Because First Security had no knowledge of the Lis Pendens, the Lis Pendens could not have alerted First Security to any facts. Thus, the sole issue before this Court on the undisputed facts of this case is whether Rilling's Lis Pendens provided First Security constructive notice of a claim by Rilling to an interest in Parcel B.

Moreover, even had First Security been aware of the Lis Pendens, that document does not contain any facts that would have alerted First Security to Rilling's undisclosed claim to a parcel of property not described in the Lis Pendens. In this respect, the holding of the Washington Supreme Court in Koch v. Swanson, 481 P.2d 915 (Wash. Ct. App. 1971), is directly analogous, and the trial court correctly applied and relied on that case.

ARGUMENT

I. RILLING'S LIS PENDENS PROVIDED NO NOTICE OF A CLAIM TO PARCEL B.

The issue before this Court is whether a street address constitutes a sufficient description of property for purposes of recordation, even when that property consists of two separate parcels. If a street address does not adequately describe property for purposes of recordation, and for the benefits of notice and constructive notice provided under the recordation system, then Rilling's appeal must fail. It is undisputed that Rilling's Lis Pendens contained no legal description of Parcel B. Thus, if Rilling can claim the benefits of recordation only as to property for which he has provided a legal description in his Lis Pendens, he can assert no claim to Parcel B.

A. The Property Description in Rilling's Lis Pendens Does Not Comply With Utah Statutory Requirements.

The issue before this Court touches directly on the integrity of the public records system, and the ability of the public to rely on the accuracy of those public records. Courts have regularly held that the benefits of notice and constructive notice provided by lis pendens statutes are available only to those who strictly comply with the statutory requirements. For example, the Wyoming Supreme Court has held that, "the recording or filing of an instrument never constitutes constructive notice unless the statutes pertaining to recording and filing are complied with. . . . " Cheyenne Nat'l Bank v. Citizen's Savings

*should misleadingly w
in mortgage
instructs*

Bank, 391 P.2d 933, 935 (Wyo. 1964). The Colorado Court of Appeals has likewise held that:

OK The recording of documents constitutes constructive notice only if it is so provided by statute. . . . Further, there must be strict compliance with the provisions of the statute, ordinance or regulation for such notice to be effective. . . . If the applicable statute or ordinance is not strictly followed, constructive notice cannot be imputed to anyone.

Arapahoe Land Title, Inc. v. Contract Financing, Ltd., 472 P.2d 754, 755-56 (Colo. Ct. App. 1970)(cites omitted). AP

Strict adherence to statutory recordation requirements is essential to the functioning of the land recordation system. The recordation system provides a convenient and inexpensive way for those claiming interests in land to provide the public with notice of those interests, and for the public to ascertain the ownership of particular parcels of land. The system works, however, only if the public can rely on the contents of recorded documents as accurate statements of the interests claimed. Thus, recorded instruments are uniformly deemed to provide constructive notice only of their own contents and of other documents referred to by them. E.g., Caito v. United California Bank, 576 P.2d 466, 470 (Cal. 1978).

The Lis Pendens recorded by Rilling on May 11, 1983 recites that the real property affected by the Lis Pendens is located at 2810 Fillmore Avenue, Ogden, Utah. The Lis Pendens then provides a legal description of Parcel A. No description of Parcel B is set forth in the Lis Pendens. Rilling's theory now

is that the street address contained in the Lis Pendens adequately described both parcels of property for purposes of recordation and provided notice of Rilling's claim to an interest in Parcel B. Rilling further argues that Utah law does not require a Lis Pendens to contain a legal description of the property affected by the Lis Pendens. [Brief of Appellant, at 10.]

Rilling bases his claim that a Lis Pendens need not contain a legal description of the property affected by it on Utah Code Ann. § 78-40-2 (1977), which identifies the statutory requirements for a Lis Pendens. Among other things, that section requires that a Lis Pendens contain, "a description of the property in that county affected thereby." Utah Code Ann. § 78-40-2. From this, Rilling concludes that there is no statutory requirement for a legal description of the property inasmuch as section 78-40-2 does not specifically require a legal description of the property. [Brief of Appellant, at 10.]

Rilling entirely ignores, however, the requirements of Utah Code Ann. § 57-3-10 (1974). This section provides that:

All instruments executed after July 1, 1961 which release or assign a mortgage, deed of trust, lease or other documents creating a lien or encumbrance on real property, shall not be entitled to recordation in the office of any county recorder unless said instruments contain a legal description of the real property affected thereby. All county recorders shall refuse to accept the same for recording until said real property description is inserted.

Utah Code Ann. § 57-3-10 (emphasis added.) An amendment to this section effective July 1, 1983, did not alter the relevant requirement that a recorded instrument must contain a legal description of the property affected by the instrument. Utah Code Ann. § 57-3-10 (1986). Rilling's Lis Pendens, which purported to create a lien against the property in favor of Rilling, was, thus, subject to the requirement of Utah Code Ann. § 57-3-10 that it contain a legal description of the property affected by the Lis Pendens.

Section 57-3-10 specifies that documents that do not contain a legal description of the property affected shall not be recorded. That provision did not bar the recordation of Rilling's Lis Pendens, however, because the Lis Pendens contained a legal description of Parcel A. The county recorder therefore received Rilling's Lis Pendens and entered the Lis Pendens in the abstract showing the chain of title of Parcel A. [Record at 82.] But the recorder had no way of knowing that Rilling also asserted a claim against Parcel B, property that was not described in the Lis Pendens. Thus the Lis Pendens was not entered in and does not appear in the abstract showing the chain of title as to Parcel B. [Record at 82.] Rilling's Lis Pendens simply gave neither the county recorder nor any other party notice of any claim by Rilling of an interest in Parcel B, because the Lis Pendens did not comply with Section 57-3-10.

B. The Structure of Utah's Recordation System Requires That Recorded Documents Contain Legal Descriptions of the Property Affected by Them.

Rilling's suggestion that the street address contained in his Lis Pendens provided a sufficient description of the property to provide notice of Rilling's claim to both Parcels A and B ignores the requirements of a recordation system. While a street address may sufficiently describe property for some purposes, a street address is not sufficient for recordation.

For example, where a street address identifies only a single parcel of property, an agreement to sell that property describing it by means of the street address may be sufficient as between the parties to the agreement. In such a case, where the parties deal face to face, in a context of shared assumptions as to the nature of the transaction, a legal metes and bounds description may be unnecessary. The mutual understanding of the parties regarding the nature of the transaction may supply a context in which a street address serves as an adequate property description. No such context of mutual understanding can exist for recorded documents that are meant to be used and relied on by the public at large. If recorded documents are to serve their function of informing the general public, those documents must reveal the nature of the transaction with precision, and that information must be apparent from the face of the document.

The organization of recorded instruments in the county recorder's office is based upon the legal descriptions of the property affected by recorded instruments. Utah statutes specify

the types of indices which a county recorder's office must maintain. Among these indices is an abstract record:

which shall show by tracts or parcels every conveyance or encumbrance, or other instrument recorded, the date and character of the instrument, time of filing the same, and the book and page and entry number where the same is recorded, which record shall be kept so as to show a true chain of title to each tract or parcel and the encumbrances thereon as shown by the records of the office.

Utah Code Ann. § 17-21-6 (1973). In the present case, First Security could only have identified who owned or claimed to own an interest in Parcel B by examining the abstract index. None of the other statutorily required indices under Utah Code Ann. § 17-21-6 would have identified a "true chain of title to each tract or parcel."

An abstract record, however, is and must be organized according to the legal description of the property contained in the instruments of record. Thus, the statutory requirement of section 57-3-10 that a recorded document contain a legal description of the property affected is essential to the recordation system. Only that requirement allows the recorder to maintain the statutorily mandated abstract index "showing a true chain of title" to property. The present case clearly illustrates the importance of these principles. Because Rilling's Lis Pendens did not comply with section 57-3-10, the recorder was unaware that Rilling asserted any claim to Parcel B. The Lis Pendens, thus, was not recorded in and does not appear in the chain of title to Parcel B.

The Kansas Supreme Court, in a case analogous to this, reviewed the issue of the specificity of property descriptions required for recordation in Luth v. Evans, 576 P.2d 1064 (Kan. 1978). In Luth, oil and gas lessees contended that a "Mother Hubbard" clause in their recorded oil and gas lease provided the lessor's successors in interest with constructive notice of the lessees' claim to an interest in property not specifically described in the lease. A "Mother Hubbard" clause, which is commonly used in the oil and gas industry, "describes the property to be conveyed as 'all of the grantor's property in a certain county. . .'. " Luth v. Evans, 576 P.2d at 1067.

The Kansas Supreme Court rejected the lessees' argument that a "Mother Hubbard" clause provides constructive notice of the property conveyed, basing its decision on the policies of the Kansas statutes pertaining to the recordation of instruments, statutes that are similar to Utah's recordation statutes. As the court noted:

It also seems obvious to us that the purpose of the statutes authorizing the recording of the instruments of conveyance is to impart to a subsequent purchaser notice of instruments which affect the title to a specific tract of land in which the subsequent purchaser is interested at the time. From a reading of all of the statutory provisions together, we have concluded that the legislature intended that recorded instruments of conveyance, to impart constructive notice to a subsequent purchaser or mortgagee, should describe the land conveyed with sufficient specificity so that the specific land conveyed can be identified. As noted above, K.S.A. 58-2203 and 58-2204 require a deed to describe the premises. A description of the property conveyed should be considered sufficient if it identifies the

OK
property or affords the means of identification within the instrument itself or by specific reference to other instruments recorded in the office the register of deeds. Such a specific description of the property conveyed is required in order to impart constructive notice to a subsequent purchaser.

Luth v. Evans, 576 P.2d at 1070. The court in Luth carefully noted, however, that a "Mother Hubbard" clause could be deemed a sufficient description of the property conveyed for purposes other than recordation. Thus, as between the parties to the instrument, a "Mother Hubbard" clause "is valid, enforceable, and effectively transfers the entire property interest." Luth v. Evans, 576 P.2d at 1070.

In the present case, Utah's recording act statutes reveal the same purpose as those of Kansas. Utah's statutes require that documents be recorded "so as to show a true chain of title to each tract or parcel." Utah Code Ann. § 17-21-6. This Court should find, as did the court in Luth, that achievement of that purpose requires that recorded documents contain a legal description of the property affected by the documents.

Because Rilling's Lis Pendens does not properly describe any claim by Rilling to an interest in Parcel B and does not appear in the record chain of title to that parcel, it provides no constructive notice of any claim by Rilling to that parcel. See Federal Land Bank of Berkeley v. Pace, 48 P.2d 480, 483-84 (Utah 1935) (bank which held an equitable lien against 2.75 acre tract was not entitled to priority over subsequent purchaser of the tract where "there is nothing on the record which could give

quote misleading

notice to third persons.") As the Colorado Court of Appeals has noted:

[I]nterested parties with no actual or constructive notice of prior conveyances or encumbrances may rely on and are bound by the recorded history of the title.

Grynberg v. City of Northglenn, 703 P.2d 601, 602-03 (Ct. App. Colo. 1985). See 66 Am. Jur. 2d Records and Recording Laws § 99 ("A person in dealing with another in respect to real estate, may rely on the record title to the property, in the absence of actual knowledge of the title in fact, or of facts sufficient to put him on inquiry in respect thereto.").

Rilling's first argument that his Lis Pendens satisfies Utah's recordation requirements in describing the property by means of a street address is untenable. Utah Code Ann. § 57-3-10 clearly requires that recorded instruments contain a legal description of the property affected by those instruments. That requirement is essential to the functioning of the public record system, because only such legal descriptions can provide a basis for indexing and searching the public records.

II. FIRST SECURITY WAS NOT ALERTED TO FACTS THAT SHOULD HAVE CAUSED IT TO HAVE DISCOVERED RILLING'S CLAIM.

Rilling next argues that his Lis Pendens contained sufficient facts to have caused First Security to inquire further and to have discovered Rilling's claim to Parcel B, even if the Lis Pendens does not comply with the Utah statutory requirements by providing a legal description of Parcel B. Rilling's Lis Pendens could have alerted First Security to facts calling for

further inquiry, however, only if First Security had known of the Lis Pendens. It is undisputed that First Security had no actual knowledge of Rilling's Lis Pendens when First Security made its loan to Marsha Rilling. [Record at 76.] Thus, the only issue before this Court is whether Rilling's Lis Pendens provided First Security with constructive notice of Rilling's claim to Parcel B. As set forth above, Rilling's Lis Pendens did not provide any such constructive notice.

Even if it is assumed that First Security was aware of Rilling's Lis Pendens, however, the Lis Pendens does not contain any facts that should have caused First Security to inquire beyond the face of the recorded Lis Pendens. Rilling bases his claim that his Lis Pendens created a duty of further inquiry on what he advances as the "general rule" that a recorded instrument may place the public on notice of a claim if it contains sufficient facts to "suggest further inquiry." [Brief of Appellant at 11.]

Rilling fails to cite, however, the equally general rule that the principle of inquiry notice is limited by the rule that:

[T]he record is notice only so far as the land is correctly described, unless it is apparent from the record itself that there is a misdescription.

66 Am. Jur. 2d Records and Recording Laws § 143. This limitation on the scope of inquiry notice recognizes that correct property descriptions are essential to functioning of the entire recorda-

tion system, and that the requirement of correct property descriptions simply cannot be waived. Apart from the fact that principles of inquiry notice are not applicable to this case, because inquiry notice extends only insofar as the property has been correctly described, however, Rilling cannot show that his Lis Pendens placed First Security on inquiry notice as to any claim by Rilling to an interest in Parcel B.

Rilling bases his claim of inquiry notice on three facts: First, he argues the property "was used in its entirety as a single family residence"; second, his Lis Pendens contained the street address of the entire property; and, third, "Hans and Marsha Rilling were involved in a divorce proceeding." [Brief of Appellant, at 13.] None of these facts could provide First Security with any notice of a claim by Rilling to an interest in a parcel of property not described in the Lis Pendens.

The alleged fact that the two parcels of property at 2810 Fillmore Avenue "was used in its entirety as a single family residence" simply does not appear anywhere, directly or by inference, in the Lis Pendens. The Lis Pendens merely provides a street address and a metes and bounds description of a certain parcel of real property, Parcel A. The Lis Pendens says nothing of the use of the property, improvements on the property, or the nature of the property.

Moreover, information as to the prior use of property affords little by way of prediction regarding its future use. Family farms that have been held and used as a single tract for

generations are regularly partitioned. A duplex used as a single family residence may be divided into separate tracts. In a divorce, the husband may acquire title to a garage where he has a shop or conducts his business at family home, while the wife acquires title to the home. The fact that Parcels A and B had been held in common would, in no respect, preclude a decree partitioning the property. Any prior use of the property stands outside the facts disclosed by an examination of record, and provides no basis for questioning the description of property claimed by Rilling in his Lis Pendens.

The fact that Hans and Marsha Rilling were engaged in divorce proceedings, likewise, provided First Security with no notice that the property description set forth in Rilling's Lis Pendens was in error. There is no rationale means by which First Security could have gone from the fact of the divorce proceedings to the conclusion that Rilling must have claimed an interest in property other than that described in the Lis Pendens.

Finally, Rilling argues that his Lis Pendens contains the street address for both parcels of property and that the street address should have alerted First Security to Rilling's claim to an interest in both parcels. It should be noted, first, that it is unclear whether the street address given in Rilling's Lis Pendens identifies both parcels of the property in any relevant sense. Speculation that someone examining only the street address set forth in the Lis Pendens, might have wondered about the extent of property claimed under the Lis Pendens, does no

more than emphasize the inadequacy of street addresses for purposes of recordation and determining the notice imparted by recorded documents.

The legal description for Parcel A set forth in Rilling's Lis Pendens, however, eliminated any basis for doubt as to the property claimed by Rilling in the Lis Pendens. The fact that Rilling provided an accurate and complete description of Parcel A in the Lis Pendens negates any inference that he asserted some unarticulated claim against any other property. As this Court has previously held, consistent with longstanding common law principles, where a conveyance contains both a legal description of the property conveyed and a more general description, the specific legal description controls in the event of any conflict or uncertainty. Neeley v. Kelsch, 600 P.2d 979, 982 (Utah 1979). Se p. 982 ("a particular is preferred over, general description").

In sum, by Rilling would provide any basis of Rilling's Lis Pendens. In the tutatory provisions, and case law, al ie contents of recorded instrumen repe knew of the Lis Pendens, it had yond the face of Rilling's Lis Pendens. Thus, First Security acquired an interest in Parcel B without notice of any claim by Rilling to an interest in that property.

III. THE TRIAL COURT CORRECTLY APPLIED AND ADOPTED THE
HOLDING OF KOCH V. SWANSON.

Rilling finally argues that the trial court misapplied the holding of the Washington Court of Appeals in the case of Koch v. Swanson, 481 P.2d 915 (Wash. Ct. App. 1971). Koch, however, does no more than reiterate certain fundamental statutory and common law principles regarding the recordation system. First, Koch stands for the principle that property must be correctly and accurately described in a recorded instrument in order for notice to be given of a party's interest in that parcel of property. Second, Koch stands for the principle that where a parcel of property that actually exists is described in a recorded instrument, the instrument provides no notice that other or different property may also be claimed under the instrument. Stated differently, where an actually existing parcel of property is described in a recorded instrument, the public is not placed on notice or duty of inquiry that the instrument affects property other than the property described in the instrument.

Koch is, however, particularly relevant to this case because of its factual similarity to the present case. In Koch, the Swansons mortgaged property to plaintiffs, the Kochs, described as:

The West 196.96 feet of the north 1-1/2 of
Tract 125 of Opportunity, except the South 169
2/3 feet thereof. . . .

Koch v. Swanson, 481 P.2d at 916. The Kochs' trust deed was properly recorded on June 30, 1965. The Swansons, however, owned

no interest in tract 125; instead, they owned tract 124. On July 7, 1965, the Swansons mortgaged a parcel of property, to Pacific First Federal described as:

The West 186.96 feet of the North half of
Tract 124 of Opportunity, as per plat thereof
recorded in Volume "K" of Plats, page 20
except THE SOUTH 169 2/3 RODS FEET THEREOF. .

. .

Koch v. Swanson, 481 P.2d at 916. The mortgage in favor of Pacific First Federal was recorded a week after the Kochs' mortgage.

The Kochs initiated an action to foreclose on their mortgage, alleging that their lien was prior to that of Pacific First Federal. It was the Kochs' theory against Pacific First Federal that:

[S]ince the only difference in description in the several conveyances is with respect to tract number, such similarities should have excited inquiry on the part of [Pacific First Federal] leading to discovery of the error in description and thus knowledge of plaintiffs' mortgage.

Koch v. Swanson, 481 P.2d at 917. In rejecting this argument and in holding that the Kochs' recorded mortgage provided no constructive or inquiry notice as to any claim by the Kochs to an interest in Tract 124, the Washington court relied on the general principle that property must be correctly described in order to provide inquiry or constructive notice. The court held that:

Where existing property is described, the index and the recorded document imparts notice only as to matters within its chain of title Therefore, one searching the index has a right to rely upon what the index and recorded document discloses and is not bound

to search the record outside the chain of title of the property presently being conveyed.

Koch v. Swanson, 481 P.2d at 917 (cites omitted).

To the same effect is Lake Louise Marie Community Assoc. v. Lake Louise Marie Corp., 266 N.Y.S.2d 156 (1966), where the court held that a lis pendens that did not accurately describe the property subject to litigation failed to provide constructive notice. Similarly, in Dorsch v. Jenkins, 365 A.2d 861, 863-64 (Pa. Super. Ct. 1976), the court held that a property description identifying only the address of property was defective and prevented a lis pendens from providing constructive notice.

Koch is factually analogous to this case and the trial court correctly applied the principles of Koch in deciding this case. As in Koch, Rilling's Lis Pendens described a parcel of property that actually exists, Parcel A. Rilling's Lis Pendens was recorded, in conformity with Utah's recordation statutes, in the chain of title to Parcel A; but the Lis Pendens does not appear in the chain of title as to Parcel B. Rilling's Lis Pendens, therefore, provided inquiry and constructive notice as to Rilling's claim to an interest in Parcel A. The Lis Pendens did not, however, provide any notice or raise any duty of inquiry with respect to Parcel B, for inquiry notice does not arise where a recorded instrument correctly describes existing property.

As the Washington court noted in Koch the argument of the Koch's, and in this case of Rilling, that the public could

not rely on property descriptions set forth in recorded instruments,

would impose an almost impossible burden upon a party seeking to become a bona fide purchaser in that each and every conveyance shown of record involving a common grantor would have to be investigated beyond the auditor's records for possible error to avoid a claim of inquiry notice. This would destroy the strength of our recording system and any justifiable reliance thereon.

Koch v. Swanson, 481 P.2d at 917-18. Such a holding in this case would have a similar effect on Utah's recordation system. Rilling's Lis Pendens must, therefore, be held to have raised no inquiry notice regarding any claim by Rilling to property other than Parcel A, which was described in the Lis Pendens.

CONCLUSION

First Security had no actual knowledge of Rilling's Lis Pendens, so the only issue before this Court is whether that Lis Pendens gave constructive notice of Rilling's claim to an interest in Parcel B. Under Utah law, a street address is not a sufficient description of property for recording purposes. Rilling's Lis Pendens, which provided a legal description of Parcel A, provided constructive notice of Rilling's claim to that parcel only. Because no legal description of Parcel B appears in the Lis Pendens and because the Lis Pendens does not appear in the record chain of title to Parcel B, it provides no constructive notice of any claim by Rilling to an interest in Parcel B.

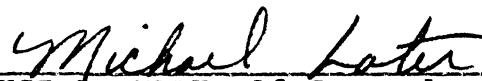
No facts set forth in Rilling's Lis Pendens could have alerted First Security to any claim by Rilling to Parcel B or

have caused First Security to make inquiry, because First Security was unaware of the Lis Pendens. Even had First Security been aware of the Lis Pendens, however, nothing in that document should have caused First Security to inquire further. Because Rilling's Lis Pendens described an existing parcel of property, Parcel A, the Lis Pendens created no duty of inquiry as to any claim Rilling might have to other property.

Because First Security had no constructive or inquiry notice regarding any claim by Rilling to Parcel B the trial court correctly ruled that the lien of First Security is superior to any claim by Rilling to Parcel B.

DATED this 12th day of March, 1987.

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of March, 1987, a true and correct copy of the foregoing Brief of Respondent First Security Financial Corporation was served by mailing a copy by United States Mail, postage prepaid addressed as follows:

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